11-0200-11216-2

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF ADMINISTRATION

In the Matter of the Appeal of the Determination of the Responsible Authority for the Hennepin County Children and Family Services Department that Certain Data about L.F. and D.F. are Accurate and/or Complete.	FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on August 8, 1997, at the Office of Administrative Hearings in Minneapolis, Minnesota. The record closed on October 20, 1997.

Vicki Vial-Taylor, Assistant County Attorney, Juvenile Protection Section, Office of the Hennepin County Attorney, Health Services Building, Suite 1210, 525 Portland Avenue, Minneapolis, Minnesota 55415, appeared on behalf of the Hennepin County Children and Family Services Department ("the County"). L.F. and D.F. appeared on their own behalf, without benefit of counsel.

This Report is a recommendation, not a final decision. The Commissioner of Administration will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Donald A. Gemberling, Director of the Public Information Policy Analysis Division, Department of Administration, 50 Sherburne Avenue, St. Paul, Minnesota 55155, telephone (612) 296-6733, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this contested case proceeding is whether or not the Child Protection Assessment prepared by a County social worker on September 5, 1996, finding maltreatment by L.F., D.F., and their minor child, A.F., is accurate and/or complete within the meaning of Minn. Stat. § 13.04, subd. 4.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Petitioners, L.F. and D.F., are married and have four children: A.F., who was 16 years old in August, 1996; S.F., age 14; X.F., age 10; and K.F., age 7. Exs. 1, 4, 10.

2. On August 8, 1996, three police officers from the Plymouth Police Department went to the Petitioners' home to check on the welfare of S.F. after receiving a report that S.F. was being molested by her 16-year-old brother, A.F. They first spoke with L.F., D.F., and S.F. S.F. initially said that she did not want to talk to the police officers, but later said that "there was some incest going on between her and her brother." S.F. did not provide any details, and the police officers did not ask for the details because she was upset and did not want to talk and because L.F. did not wish to have the police talk to her about the allegations. S.F. packed a bag and went to her grandmother's house for the evening. The police officers spoke briefly to A.F., but the Petitioners then asked the officers to stop talking to him and advised him to say nothing else about the matter since it was criminal in nature. As a result, A.F. did not say anything in response to the allegations. The police officers informed the family that the investigations unit would be in contact with them. Exs. 13-14; Testimony of L.F.

3. On August 9, 1996, D.F. made appointments for S.F. and A.F. to see a licensed psychologist on August 12, 1996, and August 13, 1996, respectively. S.F. had seen this licensed psychologist previously regarding a possible eating disorder. Exs. 8 (at 10), 10, 15; Testimony of L.F. and D.F. On August 13, 1996, after the sessions with A.F. and S.F. had been completed, the licensed psychologist filed a Suspected Child Maltreatment Reporting Form with the County. The psychologist checked the box marked "Sexual Abuse," but noted that "inappropriate sexual relations would be a more appropriate label." The following remarks were included on the form:

> [S.F.] states that "something" sexual happened when she was between 9 & 10 y o with [A.F.] who would have been between 11 and 12 y o. She states feeling very ashamed & was unable/unwilling to tell about other times. She remembered 1 X in 8th grade & 3 X this summer. [A.F.]'s reporting was very similar. The last time was 8/8/96 when there was anal penetration. . . . [S.F.] was withdrawn, quiet, difficulty sharing, scared, tears, appeared ashamed. [A.F.] was withdrawn, head hanging down, appeared ashamed, stated he was "remorseful", "wished it had never happened," "very sorry it happened" & said he feels ashamed.

Ex. 15. The psychologist did not know if the alleged anal penetration was digital or penal, if the conduct was consensual, or if force was used. Ex. 29.

4. The Plymouth Police Department reported the allegations to the County's child protection unit on August 9, 1996. On August 16, 1996, Joan Rudnik, a social worker and investigator in the County's child protection unit, was assigned to investigate the allegations. Ex. 1. During Ms. Rudnik's initial conversation with Craig Lindman of the Plymouth Police Department, Mr. Lindman indicated that S.F. had not provided her friends with details but did say that the sexual contact had begun when S.F. was in the fourth grade, and that the last occurrence was on August 8, 1996, the day that the situation was reported to the police. Exs. 1, 29; Testimony of J. Rudnik.

5. On the morning of August 16, 1996, A.F. left home to run an errand which included picking up his paycheck at work and walking to and from the bank. Both L.F. and D.F. later left for work. They expected that one of them would return home before A.F. arrived back at home. A.F. completed his errands more quickly than the Petitioners had expected and arrived home before his parents. S.F. and A.F. were in the house with their two other siblings without parental supervision for approximately 45 minutes. They stayed in separate parts of the house, and there is no allegation that any sexual contact occurred between them on that day. Testimony of D.F. and L.F.

6. When Ms. Rudnik called the home on August 16, 1996, S.F. answered the phone and said that her mother was not currently at home. During the phone conversation, S.F. told Ms. Rudnik that there were times when she and A.F. were home alone. S.F. said that A.F. was to be gone that day (August 16) but that he had come back to the house and he and S.F. were home alone (i.e., without either parent present) at the time that Ms. Rudnik placed her telephone call. S.F. further indicated that her parents had told her that they wanted one of them to be present when she was interviewed by anyone. Exs. 1, 29; Testimony of J. Rudnik.

7. L.F. returned the call that Ms. Rudnik had made to his wife later on August 16, 1996. Ms. Rudnik explained to him that Child Protection was now involved and that she would like to interview his two older children at CornerHouse (a facility that specializes in interviewing children regarding sexual abuse matters). L.F. objected to Ms. Rudnik's indication that the parents would not be present during the interviews and stated a concern that there would be no one there to protect the children's interests. He mentioned concerns about the potential for leading questions, intimidation of the children, and the trauma to the children that the interview would present. L.F. said that his concerns stemmed from the problems that occurred in Scott County some years back, where the lives of many families were ruined. Ms. Rudnik told him that parents could not be present during the interview and told him that this was the only option. Ms. acknowledged that some mistakes may have been made in the way in which Scott County handled the investigation but stated that there was child abuse there and that one person had been convicted. L.F. told Ms. Rudnik that he wanted to defer the County's involvement on any interview. Ms. Rudnik told L.F. that the County would get a "court consult" and perhaps a court order to interview S.F. L.F. stated that the County should go ahead and do that and he would tell his daughter not to talk to us. L.F. told Ms. Rudnik that L.F. and D.F. had already seen a therapist and that the therapist felt Child Protection need not be involved as long as the children were both seeing a therapist. Ms. Rudnik also cautioned L.F. about leaving the children home alone without adult supervision. L.F. told her that he and his wife had A.F. leave the house before they left for work on Aug. 16, 1996, that A.F. had completed his errands faster than they had anticipated and arrived home at 10:45 instead of 11:30 a.m., as they had expected. A.F. did not understand that he could not come home when the other siblings were also home; he merely thought that he was not supposed to be home alone with S.F. L.F. said that he and D.F. were doing their best and were trying to ensure that the children were not home alone, but that they both worked and this was sometimes impossible to do. L.F. told Ms. Rudnik that S.F. and A.F. were only unsupervised on one occasion (August 16, 1996). He indicated that he and his wife were

changing their work schedules and had their week mapped out to ensure that A.F. and S.F. were not left unsupervised. Exs. 1, 18, 29; Testimony of J. Rudnik, L.F.

8. After the Petitioners were made aware of S.F.'s allegations on August 8, 1996, there was only one occasion (August 16, 1996) on which S.F. and A.F. were at home for about 45 minutes without having an adult present in the home. This happened only because A.F. completed his errands faster than Petitioners expected on that date and he did not understand that he was not to come home until after one of his parents arrived. L.F. and D.F. changed their work schedules to ensure that that situation did not happen again. S.F. had been home with A.F. without adult supervision on other occasions prior to August 8, 1996. Ex. 2; Testimony of L.F.

9. Ms. Rudnik and D.F. had an additional telephone conversation on August 19, 1996. During the conversation, D.F. asked more questions about the CornerHouse process. Ms. Rudnik indicated that she and a plainclothes Plymouth police officer wanted to interview S.F. and K.F. They wanted to talk to K.F. to determine whether she had ever been involved. D.F told Ms. Rudnik that they had asked K.F. if A.F. had ever touched her in inappropriate places and that K.F. had said no. D.F. said that K.F. was very confused and did not even know that the police had been there. D.F. said that she wanted to keep K.F. out of the situation and not make it a traumatic experience for her. Ms. Rudnik suggested that K.F. should at least know what was going on because children can tell that there is something going on. D.F. told Ms. Rudnik that the incidents between S.F. and A.F. were a mutual situation. Ms. Rudnik said that sometimes the incidents start out as mutual, but then the brother forces the sister into it as time goes on, citing a similar past case. D.F. told Ms. Rudnik that S.F. and A.F. had gone to a therapist and that the therapist had filed a report with Child Protection, and asked if Ms. Rudnik had received a copy of the report. Ms. Rudnik said that she did not have a copy. D.F. told Ms. Rudnik that the therapist had agreed with the parents that it was a good idea to get the children into therapy and involve as few people as possible. Ms. Rudnik said that some people say that they will go to therapy but later do not continue. Ms. Rudnik said that she wanted to do what was best for S.F. and indicated that the parents would show S.F. they cared by following through with the process. Ms. Rudnik said that she wanted to make the process the least traumatic process possible and that she would follow this process if it were her daughter or grand-daughter. D.F. indicated that she and her husband were also trying to make the process the least traumatic process possible for their child and for the family. D.F. said that she would discuss the situation with L.F. Ex. 17; Testimony of D.F. and L.F.

10. The County filed a Summons and Petition in Hennepin County District Court - Juvenile Division on August 22, 1996. In the Petition, the County alleged, among other things, that A.F. had been sexually molesting S.F. since she was in the fourth grade and that the parents had neglected the children's needs by continuing to allow them to spend unsupervised time together. The County requested an Order to Show Cause requiring the parents to produce their four children for interviews at CornerHouse. Ex. 4. An Order to Show Cause was, in fact, issued on August 22, 1996, scheduling a hearing on August 26, 1996. Ex. 5.

11. During the August 26, 1996, hearing in Hennepin County District Court - Juvenile Division, the Petitioners raised objections to the CornerHouse interviews based

upon their belief that the interview process would be generally traumatic for the children and the family and it was unnecessary to involve the younger children, and noted that the County had refused to allow the parents or any representative of the parents to be present during the interviews. Ex. 8 at 7-8. After the hearing, Judge Bransford determined that there was probable cause to believe that a juvenile protection matter existed and that the four children were the subjects of that matter. Judge Bransford ordered, inter alia, that a parent or an adult be present supervising the children at all times and that the two younger children be interviewed at CornerHouse prior to the next court hearing on September 4, 1996, under the "rules that are set up which [Judge Bransford] believe[s] would involve that the parents cannot be present during the interview." Ex. 8 at 15. The hearing was continued to enable S.F. and the Petitioners to obtain representation, and the issues relating to S.F.'s interview at CornerHouse and the release of S.F.'s medical information were reserved until the next hearing. Exs. 6, 7.

12. Interviews of the two younger children of L.F. and D.F. were held at CornerHouse during the morning of September 4, 1996, in accordance with the Court's Aug. 26, 1996, Order. Prior to the interviews, CornerHouse personnel recommended that the primary victim (S.F.) be interviewed first and that the two younger children be interviewed thereafter only if it seemed warranted. Ex. 27. No additional allegations of sexual abuse emerged during the interviews of the two younger children. They denied that anyone had touched them sexually. Exs. 1, 9; Testimony of J. Rudnik.

13. An additional court hearing was held during the afternoon of September 4, 1996, before Judge Stanoch of Hennepin County District Court, Juvenile Division. During that hearing, counsel for S.F. requested that S.F. be temporarily placed outside her parents' home due to her feelings of intense pressure in her home, a lack of support in her ability to deal with the issues, and fear for her emotional safety. Counsel for the County indicated that the County would not ask the Court to require S.F. to participate in a CornerHouse interview under the circumstances. Judge Stanoch granted S.F.'s request to be placed out of the home and to receive therapy and counseling services. Exs. 9, 10.

14. On or about September 5, 1996, the County made a determination that maltreatment had occurred on three bases: A.F. had sexually abused S.F., and the Petitioners had failed to protect their children. Exs. 1, 31.

15. By letter dated November 1, 1996, the Petitioners sought to have the County re-examine its finding of maltreatment in this matter. By letter dated November 21, 1996, the County notified the Petitioners that it had decided to adhere to its original determination. The Petitioners were advised of their right to appeal this determination to the Commissioner of Administration. Ex. 28.

16. By letter dated December 13, 1996, the Petitioners informed the Commissioner of Administration of their wish to appeal and further challenge the accuracy and completeness of data maintained by the County. Ex. 3. The Commissioner of Administration thereafter initiated this contested case proceeding.

17. The Office of the Hennepin County Attorney notified counsel for A.F. by letter dated October 31, 1996, that the County would not be prosecuting A.F. for the sexual abuse between A.F. and S.F. on the condition that A.F. agree to cooperate fully with the

Hennepin County Department of Children and Family Services, A.F. agree to comply fully with the Department's recommendations regarding therapy, and A.F. and his parents sign all releases relating to therapy records. See Attachment to Ex. 10. The Petitioners and their children thereafter signed authorizations for release of the children's medical/psychological records. Ex. 10 (stipulated fact).

18. On December 4, 1996, the Hennepin County District Court, Juvenile Division, entered Findings of Fact, Conclusions of Law and Order for Legal Custody in which the Court determined that legal custody of S.F. would be transferred to the County and she would continue in out-of-home placement and that A.F., X.F. and K.F. would remain in the care and custody of their parents under the protective supervision of the County Department of Children and Family Services on the condition that adult supervision was provided in the home when children were present, the parents fully comply with a case plan that included successful completion by parents and children of the personal social awareness program at Lutheran Social Services, and a County child protection social worker would be allowed to make unannounced visits to the home. Ex. 10.

19. In the Quarterly Reassessment of Protective Service Plan prepared by the County in December, 1996, the County noted that the Petitioners had consistently made arrangements so that the younger children were not left in the care of A.F.; the Petitioners, A.F., and S.F. had begun treatment/therapy at Lutheran Social Services in a program for adolescent siblings who have been involved in incest; and the Petitioners were allowing the County child protection worker to have access to their home when access was requested. The County estimated that it would take twelve to eighteen months to complete the therapy program and indicated that dismissal of court jurisdiction could be requested when substantial progress had been made, assuming that the family continued its commitment to complete necessary treatment and maintain a safety plan for the children. Ex. 31.

20. According to a Progress Report filed by the County with the Hennepin County District Court, Juvenile Division, in July, 1997, S.F. returned to the Petitioners' home in April, 1997, the family had been attending a program at Lutheran Social Services for over seven months, and the parents understood the need to supervise contact between S.F. and A.F. and had been providing adequate supervision. The County indicated in the Progress Report that it expected to continue to monitor progress on the case plan until it was substantially completed in late 1997. The County assessed the risk to the children as low, and requested that court jurisdiction be dismissed. Jurisdiction apparently was dismissed by the Court on July 18, 1997. Ex. 11.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Administration have jurisdiction in this matter pursuant to Minn. Stat. §§ 13.04, subd. 4, and 14.50 (1996), and Minn. R. 1205.1600 (1995).

2. The Department of Administration has complied with all relevant substantive and procedural requirements of law or rule.

3. The Department of Administration has given proper notice of the hearing in this matter and has the authority to take the action proposed.

4. The Petitioners, L.F. and D.F., and their minor children are the subject of private data on individuals which is maintained by the Hennepin County Children and Family Services Department under Minn. Stat. § 626.556 (1996).

5. Pursuant to Minn. Stat. § 13.04, subd. 4 (1996), an individual may contest the accuracy or completeness of public or private data relating to him or her and may appeal the determination of the responsible authority in this regard pursuant to the provisions of the Administrative Procedure Act.

6. Pursuant to Minn. R. 1400.7300, subp. 5 (1995), the burden of proof in this proceeding is upon the Petitioners to prove by a preponderance of the evidence that the data is not accurate and/or complete.

7. Pursuant to Minn. R. 1205.1500, subp. 2(A) (1995), "'[a]ccurate' means that the data in question is reasonably correct and free from error."

8. Pursuant to Minn. R. 1205.1500, subp. 2(B) (1995), "'[c]omplete' means that the data in question reasonably reflects the history of an individual's transactions with the particular entity. Omissions in an individual's history that place the individual in a false light shall not be permitted."

9. A person who is the subject of private data may challenge the accuracy not only of facts, but also conclusions contained in that data. Hennepin County Community Services Department v. Hale, 470 N.W.2d 159 (Minn. App. 1991).

10. Upon receipt of a report alleging neglect or sexual abuse of a minor, the local welfare agency must immediately conduct an assessment, offer protective social services if appropriate, and prepare a written report of the results of its investigation. Upon the completion of its investigation, the local agency is required to determine, based upon a preponderance of the evidence, whether maltreatment has occurred and whether protective services are needed. Minn. Stat. § 626.556, subds. 10 and 10e (1996); see also Minn. R. 9560.0220, subp. 6 (1995).

11. Under Minn. Stat. § 626.556, subd. 2(a) (1996), "sexual abuse" is defined in relevant part as "the subjection of a child . . . by a person who has a significant relationship to the child, as defined in section 609.341, . . . to any act which constitutes a violation of section 609.342 [criminal sexual conduct in the first degree], 609.343 [criminal sexual conduct in the second degree], 609.344 [criminal sexual conduct in the third degree], or 609.345 [criminal sexual conduct in the fourth degree]. . . ." The term "significant relationship" is defined in Minn. Stat. § 609.341, subd. 15 (1996), to include situations in which the actor is the complainant's brother.

12. Criminal sexual conduct in the first and second degrees is defined to include situations in which a person engages in sexual penetration or sexual contact with another person, the actor has a significant relationship to the complainant, and the complainant was under 16 years of age at the time of the sexual penetration or sexual

contact. Consent to the act by the complainant is not a defense to either of these crimes. Minn. Stat. §§ 609.342, subd. 1(g), and 609.343, subd. 1(g) (1996). "Sexual penetration" is defined to include "any intrusion however slight into the genital or anal openings . . . of the complainant's body by any part of the actor's body . . . ." Minn. Stat. § 609.341, subd. 12 (1996). "Sexual contact" is defined to include "the intentional touching by the actor of the complainant's intimate parts or the touching of the clothing covering the immediate area of the intimate parts." Minn. Stat. § 609.341, subd 11 (1996). Criminal sexual conduct in the third degree is defined to include situations in which a person engages in sexual penetration with another person where the complainant is at least 13 but less than 16 years old and the actor is more than 24 months older than the complainant. Once again, consent by the complainant is not a defense. Minn. Stat. § 609.344, subd. 1(b) (1996).

13. A.F. was S.F.'s brother and thus had a significant relationship with S.F. He was 16 years old at the time the allegations of abuse were made, and was just slightly more than 24 months older than S.F., who was 14. Information supplied to the County by the licensed psychologist who counseled S.F. and A.F. and by the police officer who spoke to those who initially reported the alleged sexual abuse indicated that A.F. engaged in sexual penetration with S.F. when she was 14 years old and in other sexual contact with S.F. at various times going back to when she was approximately 9 or 10 years old. In addition, the Findings of Fact, Conclusions of Law, and Order for Legal Custody issued by the Hennepin County District Court - Juvenile Division on December 4, 1996, include a stipulated Finding of Fact that, "[o]n August 8, 1996, S.F. "reported having ongoing sexual contact with [A.F.] beginning when she was ten (10) years old and continuing to the present." The conduct alleged constitutes a violation of Minn. Stat. § 609.342, subd. 1(g), 609.343, subd. 1(g), and/or 609.344, subd. 1(b)(1996). Neither A.F. nor S.F. provided any information or evidence to the County contradicting that information. To the contrary, S.F. provided consistent information concerning the duration of the alleged abuse to her friends on August 8, 1996. In addition, the determination that sexual abuse occurred is consistent with the fact that S.F. described the conduct as "incest," was emotionally distraught, and asked to be removed from the home. Accordingly, the County's determination that A.F. sexually abused S.F. was supported by a preponderance of the evidence.

14. Under Minn. Stat. § 626.556, subd. 2(c) (1996), "neglect" is defined in relevant part as "failure by a person responsible for a child's care to . . . protect a child from conditions or actions which imminently and seriously endanger the child's physical or mental health when reasonably able to do so . . . ."

15. Minn. R. 9560.0214 (1995), defines "imminent danger" to mean that "a child is threatened with immediate and present maltreatment that is life threatening or likely to result in abandonment, sexual abuse, or serious physical injury."

16. The County's determination that the Petitioners failed to protect (i.e., neglected) S.F. or their other children is not supported by a preponderance of the evidence.

17. The Petitioners have proved by a preponderance of the evidence that the Child Protection Assessment issued by Joan Rudnik on September 5, 1996, is

inaccurate and incomplete in certain respects and should be changed in accordance with the Addendum attached hereto, which is hereby incorporated herein by reference.

18. Citation to exhibits or testimony in the Findings of Fact set forth above does not mean that all testimony or exhibits that support the Findings have been cited.

19. These Conclusions are reached for the reasons set forth in the Memorandum which follows. The Memorandum is hereby incorporated into these Conclusions by reference.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that:

(1) The Commissioner of Administration issue an Order requiring that the September 5, 1996 Child Protection Assessment be amended as set forth in the attached Addendum. The Addendum contains not-public data and shall not be considered a public document.

(2) The following notice be added to the September 5, 1996, Child Protection Assessment: "This document has been altered to change, explain, or delete data found to be inaccurate or incomplete by the Commissioner of Administration."

(3) The Hennepin County Children and Family Services Department make the corrections to the September 5, 1996, Child Protection Assessment within 30 days of the date of the Commissioner's final order.

(4) The Hennepin County Children and Family Services Department notify any individuals or entities who have received the September 5, 1996, Child Protection Assessment that the data contained therein has been altered as provided in this Order.

Dated this _____ day of November, 1997

_____
BARBARA L. NEILSON
Administrative Law Judge

Reported: Tape recorded; no transcript prepared.

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The primary issues presented in this case are (1) whether the County accurately concluded that A.F., a 16-year-old boy, sexually abused S.F., his 14-year-old sister, and (2) whether the County accurately concluded that the Petitioners, L.F and D.F., failed to protect S.F. by neglecting to ensure that there was continual parental or adult supervision of A.F. and S.F. following their discovery of the allegations on August 8, 1996. The case is complicated by the fact that the Petitioners decided that they would not allow A.F. and S.F. to be interviewed by County or law enforcement personnel, and the County did not ultimately obtain a court order requiring that they be interviewed. A.F. and S.F. were never interviewed in any depth, and they did not deny the allegations made by the others. As a result, the allegations of sexual abuse upon which the County relies were obtained from third-party sources such as the children's therapist and law enforcement personnel who reported what friends of S.F. had said. The County also argued at the hearing that its maltreatment determination on the sexual abuse issue was supported by a later Finding of Fact issued by the Juvenile Court. Each of the maltreatment issues will be discussed in detail below, along with other modifications that were requested by Petitioners.

Sexual Abuse Finding

The Administrative Law Judge must first determine whether a preponderance of the evidence indicates that there was sexual abuse of S.F. by A.F. The Petitioners argue, in essence, that the County social worker who investigated the maltreatment allegation and determined, in conjunction with her supervisor, that sexual abuse be found to have occurred was biased and unfair in her approach to the parents and A.F. and that the Child Protection Assessment she issued was inaccurate, incomplete, and not supported by relevant documentation. The County asserts in response that the Child Protection Assessment is accurate and complete and that the only inaccuracies are a few minor errors in the report.

The governing statute and the rules promulgated by the Department of Human Services ("DHS") with respect to reports of maltreatment within the family unit contemplate that the local welfare agency will generally interview parents as well as the alleged child victim and will seek a court order to produce the child for an interview if necessary (see Minn. Stat. § 626.556, subd. 10(c)-(f) (1996), and Minn. R. 9560.0220, subps. 3-4 (1995)). Although a formal interview with the parents apparently was not requested in this case, the County worker had numerous phone conversations with L.F. and D.F. during which they apparently made clear to the County their view of the matter. L.F. and D.F. resisted efforts by the police and the County to interview S.F., A.F., and their two younger children based in part on concerns about criminal prosecution, fairness of questioning, and traumatic impact of the questioning on the children, and the parents' dissatisfaction with the County's view that the parents would not be allowed to be present or observe the interviews.[1] The two younger children were eventually interviewed by Court order. After S.F. requested that she be placed outside the home, the County did not pursue its request to interview S.F. and A.F. While the investigation would have been more thorough had interviews been conducted with all four children and the parents, the Judge does not view a proceeding to challenge the accuracy and completeness of data to provide a proper basis for challenging the parameters of the investigation conducted by the County. Rather, the focus in this proceeding must be on whether the information conveyed in the data maintained by the County is reasonably correct and free from error, reasonably reflects the history of L.F.'s and D.F.'s transactions with the County, and avoids omissions that place them in a false light. See Minn. R. 1205.1500, subps. 2(A) and 2(B) (1995).

It appears to be clear, as a threshold matter, that the County may properly rely upon information obtained from psychologists and law enforcement officials in reaching its determination regarding maltreatment. The governing statute directs local agencies to coordinate the planning and execution of sexual abuse investigations with local law enforcement agencies. Minn. Stat. § 626.556, subd. 10(a) (1996). The statute requires local agencies to "collect available and relevant information to ascertain whether maltreatment occurred and whether protective services are needed," including "information with regard to the person reporting the alleged maltreatment . . . and other collateral sources having relevant information related to the alleged maltreatment." Minn. Stat. § 626.556, subd. 10(h). Such collateral information encompasses "prior medical records relating to the alleged maltreatment or the care of the child and an interview with the treating professionals." Id., subd. 10(h)(3). The DHS rules also authorize the local agency

to "interview other persons whom the agency believes may have knowledge of the alleged maltreatment." Minn. R. 9560.0220, subp. 5 (1995). Moreover, the County's own guidelines indicate that a maltreatment finding must be based on credible evidence such as admissions obtained from the parents or responsible persons or information regarding possible abuse or neglect obtained from community professionals such as psychologists and law enforcement officials. Ex. 12. Finally, collateral information of this sort is properly admissible in evidence during a contested case proceeding.[2]

When the orders issued by the Juvenile Court and the underlying information obtained during the investigation is reviewed, a preponderance of the evidence supports the sexual abuse finding. Most significant in the view of the Administrative Law Judge is the statement filed with the County by the licensed psychologist who held sessions with S.F. and A.F. shortly after the allegations surfaced. The psychologist stated that S.F. reported that she and A.F. had engaged in some type of sexual conduct on at least four occasions since S.F. was 9 or 10 years old, including anal penetration on August 8, 1996. The psychologist further indicated that A.F.'s "reporting was very similar" and that he said that he was ashamed, "remorseful," "wished it had never happened," and was "very sorry it happened." These comments by A.F. suggest that he admitted the allegations. Moreover, on December 4, 1996, the Juvenile Court issued Findings of Fact, Conclusions of Law, and an Order for Legal Custody which were based on stipulated facts that included the following finding: "On August 8, 1996, [S.F.] reported having ongoing sexual contact with [A.F.] beginning when she was ten (10) years old and continuing to the present." Ex. 10 (Finding 6.0). This Finding was reached as part of a settlement agreement between the parties. L.F. and D.F. were represented by an attorney at the time. The credibility of the information related by S.F. and A.F. to their psychologist is enhanced by the fact that S.F. apparently provided consistent information to her friends on August 8, 1996, concerning the duration of the alleged abuse (from the time she was in fourth grade until August 8, 1996). Craig Lindman of the Plymouth Police Department apparently passed this information along to Ms. Rudnik during his initial phone conversation with her on August 16, 1996. S.F.'s statement to her friends thus provides some additional corroboration of the allegations. The additional factors upon which Ms. Rudnik placed reliance--the fact that S.F. described the conduct as "incest," was emotionally distraught, and asked to be removed from the home--also provide some additional support for the determination that sexual abuse had occurred. All of this evidence, taken together, is strongly supportive of the County's sexual abuse finding, particularly since no conflicting evidence was uncovered during the investigation.

The psychologist may very well be right when she noted on the reporting form that the term "inappropriate sexual relations" would seem to a more accurate description of the conduct at issue than "sexual abuse." However, even if the contact between S.F. and A.F. were, in fact, consensual but inappropriate sexual relations, it still falls within the criminal code definition of criminal sexual conduct in any event and, accordingly, is encompassed within the definition of "sexual abuse" contained in the statute governing the reporting and investigation of maltreatment allegations involving minors. That statute defines "sexual abuse" in relevant part as "the subjection of a child . . . by a person who has a significant relationship to the child, as defined in section 609.341, . . .

to any act which constitutes a violation of section 609.342, 609.343, 609.344, or 609.345. . . ." Minn. Stat. § 626.556, subd. 2(a) (1996).

The conduct related by S.F. and A.F. to their psychologist falls within the statutory provisions describing criminal sexual conduct in the first, second, and third degrees that are referenced in the maltreatment of minors statute. For example, criminal sexual conduct in the first and second degrees includes situations in which a person engages in sexual penetration or sexual contact with another person, the actor has a significant relationship to the complainant (such as brother), and the complainant was under 16 years of age at the time of the sexual penetration or sexual contact. Consent to the act by the complainant is not a defense to either of these crimes. Minn. Stat. §§ 609.342, subd. 1(g), and 609.343, subd. 1(g) (1996). Moreover, criminal sexual conduct in the third degree includes situations in which a person engages in sexual penetration with another person where the complainant is at least 13 but less than 16 years old and the actor is more than 24 months older than the complainant. Once again, consent by the complainant is not a defense. Minn. Stat. § 609.344, subd. 1(b) (1996). The conduct alleged falls within these provisions.[3]

A.F. was S.F.'s brother and thus had a significant relationship with S.F. He was 16 years old at the time the complaint was made, and was just slightly more than 24 months older than S.F. Information supplied to the County by the licensed psychologist who counseled S.F. and A.F. and by the police officer who spoke to those who initially reported the alleged sexual abuse indicated that A.F. had engaged in sexual penetration and/or sexual contact with S.F. when she was 14 years old and younger. The conduct alleged constitutes a violation of Minn. Stat. § 609.342, 609.343, or 609.344 (1996). Neither A.F. nor S.F. provided any information or evidence to the County contradicting that information. Accordingly, the County's determination that A.F. sexually abused S.F. was supported by preponderance of the evidence.[4]

The Petitioners argue that a finding of maltreatment in the present case is contrary to child protection guidelines issued by Hennepin County. Those guidelines indicate that the County "will make a determination that maltreatment has occurred when: 1) there is credible evidence that a child has suffered physical, mental or emotional harm, and 2) the harm was caused by the act or failure to act of a person within the family who is responsible for the child's care." Ex. 12. The same standard is specified in rules adopted by the Department of Human Services pertaining to reports of maltreatment within the family unit. See Minn. R. 9560.0220, subp. 6(A) (1995). The Petitioners assert, based on the County guidelines, that a finding of sexual abuse by A.F. is inappropriate because there is no evidence that the harm was caused by the act or failure to act of a person within the family who is responsible for S.F.'s care.

The DHS rule on which the County guideline is apparently based was promulgated in 1988. See 13 State Register 303 (Aug. 8, 1988) and 12 State Register 2176 (April 4, 1988). At that time, the governing statute referred only to acts by persons who are responsible for the child's care or are in a position of authority. See Minn. Stat. § 626.556, subd. 2(a) (1988). The statute, was, however, amended in 1994, after the adoption of the rule, to expressly provide that "sexual abuse" includes proscribed acts "by a person who has a significant relationship to the child" as well as by a person responsible for the child's care or a person in a position of authority. Minn. Stat.

§ 626.556, subd. 2(a) (1996). The statute thus was amended to extend its reach to persons who have a significant relationship with the child as well as those who have responsibility for the child's care. The Hennepin County guidelines and the DHS rule provision would, if literally applied here, improperly restrict the applicability of the statute and thus cannot be viewed as controlling on this point.

Accordingly, the County's determination that sexual abuse occurred is found to be supported by a preponderance of the evidence.

Neglect Finding

Under Minn. Stat. § 626.556, subd. 2(c) (1996), "neglect" is defined in relevant part as "failure by a person responsible for a child's care to . . . protect a child from conditions or actions which imminently and seriously endanger the child's physical or mental health when reasonably able to do so . . . ." The term "imminent danger" is defined in Minn. R. 9560.0214 (1995) to mean situations in which "a child is threatened with immediate and present maltreatment that is life threatening or likely to result in abandonment, sexual abuse, or serious physical injury."

The County contends that the neglect determination is supported by the fact that S.F. did not feel safe in her home (since she opted to be placed outside the home), she was home with A.F. without adult supervision on August 16, and she had told the County social worker that there were "times" when she was left alone with A.F. Ms. Rudnik interpreted the latter remark to mean that there had been more than one time since August 8, 1997, that A.F. and S.F. had been at home together outside the presence of an adult. The County also argues that the Petition filed by the County made a specific allegation that the parents had failed to protect S.F. and that the probable cause order issued by the Court included that finding. However, the ultimate Findings of Fact, Conclusions of Law, and Order for Legal Custody issued by the Juvenile Court did not conclude that the children were in need of protection or services due to parental neglect or failure to protect. Under these circumstances, the earlier probable cause determination is of little import.

The Petitioners provided convincing testimony that the only time that A.F. and S.F. were home without adult supervision after the Petitioners learned of the sexual conduct allegations on August 8, 1996, was for approximately 45 minutes on August 16. With respect to that incident, the Petitioners testified that they expected that A.F. would not return home until after one of them arrived home, A.F. finished his errands more quickly than they had expected, and A.F. mistakenly thought that he could come home that day as long as other siblings were also present. The Petitioners indicated that they successfully changed their work schedules in order to ensure that one of them would be present when both A.F. and S.F. were home. There is no allegation that any sexual contact occurred between A.F. and S.F. on August 16 or on any other occasion after August 8, 1996, when the initial police report was made.

Under these circumstances, a determination of neglect is unwarranted. To the contrary, the Petitioners had a plan by which A.F. was to stay away from the home on August 16 until one of them returned home from work. Unfortunately, the plan failed to work due to an unintentional error in calculating the amount of time that A.F.'s errands would take and due to a misunderstanding by A.F. concerning whether he was allowed to return home when other siblings were also present. A.F. and S.F. remained in different parts of the house, other children were also present, and there is no allegation that sexual contact occurred. The Petitioners did not fail to protect S.F. from conditions or actions which imminently and seriously endangered her health, nor was S.F. threatened with immediate and present maltreatment that was likely to result in sexual abuse in this situation.

The Administrative Law Judge thus concludes that, under the circumstances of this case, the County's determination that L.F. and D.F. had failed to protect S.F. was not supported by a preponderance of the evidence. To the contrary, L.F. and D.F. have proven by a preponderance of the evidence that the Child Protection Assessment issued on September 5, 1996, is inaccurate in its determination that they failed to protect S.F. The modifications included in the attached Addendum will, if accepted by the Commissioner, require the County to change the September 5, 1996, child protection assessment to reflect that there is no basis for a determination of maltreatment by L.F. and D.F., as permitted under Hennepin County Community Services Department v. Hale, 470 N.W.2d 159 (Minn. App. 1991).

Other Modifications

Based upon a careful consideration of the record in this case, the Administrative Law Judge concludes that the Appellant has established by a preponderance of the evidence that the November 8, 1995, child protection report is inaccurate and incomplete in certain respects because it is not reasonably correct and free from error and does not in all instances reasonably reflect the statements made by the Petitioners or their children or the information contained in the police reports and other documentation at issue. The attached Addendum sets forth the existing language of the September 5, 1996, child protection assessment and the modifications that the Administrative Law Judge recommends be made to the report in order to render it accurate and complete, in accordance with the documentation and the testimony of Petitioners and Ms. Rudnik. For example, because the Petitioners' testimony made it clear that A.F. did not say anything to the police in response to the allegations, the language in the original Assessment indicating that A.F. "never denied the allegations" thus is somewhat misleading and places A.F. in a false light. The Judge thus has recommended that this language be modified to simply indicate that A.F. did not say anything in response to the allegations. It is recommended that the statement that someone whose identity had been redacted opined that L.F. and A.F. were physically and verbally abusive with D.F. and the girls in the family be deleted from the Assessment since this information was not noted in the police report that was issued by Mr. Lindman and appears to be irrelevant to the primary matters under consideration in the Assessment. It is recommended that the discussion of the conversation between Ms. Rudnik and L.F. on August 16, 1996, be modified to provide additional detail about the nature of the concerns expressed by L.F., to more accurately describe what was said, and to eliminate the reporting of Ms. Rudnik's "impression" that the most important thing to L.F. was to keep the family together.

Because the September 5, 1996, Child Protection Assessment did not reference the August 19, 1996, telephone conversation between D.F. and Ms. Rudnik, it is recommended that the memorandum be revised to include a summary of the matters discussed during that telephone conversation. Recommendations for revision have also been made to ensure that the Assessment comports with the transcript of the August 26, 1996, hearing and the Interim Order for Protective Supervision issued on August 28, 1996 (Exs. 6 and 8), accurate information is included regarding the information release forms submitted by D.F. and L.F., errors admitted by Ms. Rudnik during the hearing are corrected, more complete information is provided concerning the report provided by the

children's licensed psychologist and Ms. Rudnik's subsequent telephone conversation with her,[5] and the apparent interjection of Ms. Rudnik's personal definition of the term "incest" is deleted.[6]

Not all of the changes sought by the Petitioners in various documents contained in the County's file have been recommended. Certain of the issues and data challenges raised in by the Petitioners in their December 13, 1996, letter to the Commissioner of Administration, at the hearing, and in their post-hearing submissions are not appropriately raised in the context of this proceeding. For example, issues relating to the speed with which the County provided the Petitioners with information from their file and the propriety of the County's decision to proceed with a CornerHouse interview with the two youngest children during their investigation are not relevant in a contested case challenging the accuracy and completeness of data. In addition, the Administrative Law Judge has determined that it would not be appropriate to order modifications in the petition that was filed by the County with the Juvenile Court (Ex. 4). This petition merely contains allegations that were made by the County in a legal proceeding. The document was filed with the Court, accurately states the County's allegations at that time, and should not properly be ordered to be corrected or changed. If pleadings were permitted to be changed after the time that they are filed, it could render the eventual decisions issued by courts based on those pleadings incomprehensible. In addition, the language contained in the Reason for Placement portion of the Initial Assessment prepared by St. Joseph's Home for Children (Ex. 30) merely indicates that Ms. Rudnik, the County's child protection worker, expressed her opinion that the family and grandmother had not been supportive of S.F.. The report accurately reflects what Ms. Rudnik said to St. Joseph's intake personnel at the time, and thus should not be modified.

B.L.N.

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[1] Minn. Stat. § 626.556, subd. 10(e) (1996), expressly permits the Juvenile Court to "order the parents . . . to produce the alleged victim or other minor for questioning by the local welfare agency or the local law enforcement agency outside the presence of the alleged offender or any person responsible for the child's care at reasonable places and times as specified by court order."

[2] The rules governing contested case proceedings promulgated by the Office of Administrative Hearings permit the receipt of hearsay evidence as long as it is "the type of evidence upon which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs." Minn. R. 1400.7300, subp. 1 (1995). It is evident that County social workers are accustomed to relying upon police reports and the reports of treating psychologists in conducing child protection assessments.

[3] The County also argued that the conduct alleged fell within Minn. Stat. §§ 609.342, subd. 1(h), and 609.343, subd. 1(h) (1996), which include situations in which a person engages in multiple acts of sexual penetration or sexual contact with another person, the actor over an extended period of time, the actor has a significant relationship to the complainant, and the complainant was under the age of 16. Because no detailed information was provided concerning the nature of the sexual conduct prior to the August 8, 1996, act of anal penetration, the Judge is unable to conduct that the prior conduct meets the definition of sexual contact as set forth in Minn. Stat. § 609.341, subd. 11 (1996).

[4] During the hearing, the Petitioners questioned why A.F. was found to have sexually abused S.F., but S.F. was not found to have sexually abused A.F. If S.F. were viewed as the perpetrator and A.F. as the complainant, the conduct could conceivably fall within the portion of the definition of criminal sexual conduct in the fourth degree set forth in Minn. Stat. § 609.345, subd. 1(f) (1996), which includes sexual contact by an actor who has a significant relationship to a complainant who is at least 16 but under 18 years of age. Consent is not a defense to this crime. However, the Administrative Law Judge is unwilling to conclude that it is appropriate to require that the County make a finding that S.F. sexually abused A.F. under the facts of this case, where A.F. was two years older than S.F., the sexual conduct began when S.F. was only in fourth grade, A.F. never complained about the conduct to anyone, and there is no detailed information about the nature of the sexual conduct other than the fact that there was anal penetration of S.F.

[5] The Petitioners contend that, according to County guidelines, there should have been a tape recording of Ms. Rudnik's conversation with the psychologist. The guidelines simply provide that interviews with health professionals must be tape recorded "when possible." Ms. Rudnik testified that she does not have equipment to tape record telephone conversations.

[6] "Incest" is defined in the New Webster's Dictionary and Thesaurus (Lexicon Publications, Inc., 1991) of the English Language to mean "sexual intercourse between persons so closely related that marriage between them is forbidden by law." The common meaning of the term does not include any connotation that the intercourse either is or is not consensual. In addition, as discussed above, the presence or absence of consent is not an issue given the youth of the complainant.